

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

UNIVERSITY OF TENNESSEE RESEARCH
FOUNDATION AND SAINT MATTHEW
RESEARCH, LLC,

Plaintiffs,

v.

TERADATA OPERATIONS, INC.,

Defendant.

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Civil Action No. 3:17-cv-00194-HSM-CCS

JURY TRIAL DEMANDED

UNIVERSITY OF TENNESSEE RESEARCH
FOUNDATION AND SAINT MATTHEW
RESEARCH, LLC,

Plaintiffs,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

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Civil Action No. 3:17-cv-00193-HSM-CCS

JURY TRIAL DEMANDED

UNIVERSITY OF TENNESSEE RESEARCH
FOUNDATION AND SAINT MATTHEW
RESEARCH, LLC,

Plaintiffs,

v.

AMAZON.COM, INC. and AMAZON WEB
SERVICES, INC.,

Defendants.

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§ Civil Action No. 3:17-cv-00181-HSM-CCS
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JURY TRIAL DEMANDED

UNIVERSITY OF TENNESSEE RESEARCH
FOUNDATION AND SAINT MATTHEW
RESEARCH, LLC,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

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§ Civil Action No. 3:17-cv-00184-HSM-CCS
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JURY TRIAL DEMANDED

UNIVERSITY OF TENNESSEE RESEARCH
FOUNDATION AND SAINT MATTHEW
RESEARCH, LLC,

Plaintiffs,

v.

HEWLETT PACKARD ENTERPRISE
COMPANY and HP ENTERPRISE
SERVICES, LLC,

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§ Civil Action No. 3:17-cv-00185-HSM-CCS
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JURY TRIAL DEMANDED

Defendants.

UNIVERSITY OF TENNESSEE RESEARCH
FOUNDATION AND SAINT MATTHEW
RESEARCH, LLC,

Plaintiffs,

v.

ORACLE AMERICA, INC.,

Defendant.

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Civil Action No. 3:17-cv-00186-HSM-CCS

JURY TRIAL DEMANDED

UNIVERSITY OF TENNESSEE RESEARCH
FOUNDATION AND SAINT MATTHEW
RESEARCH, LLC,

Plaintiffs,

v.

SAP AMERICA, INC.,

Defendant.

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Civil Action No. 3:17-cv-00187-HSM-CCS

JURY TRIAL DEMANDED

**DEFENDANTS' MOTION FOR CONSOLIDATED
CASE-MANAGEMENT CONFERENCE**

Defendants in the patent-infringement cases captioned above and listed below, pursuant to Fed. R. Civ. P. 16, move the Court for a consolidated case-management conference that includes attendance by counsel for each of the parties to these cases. For the sake of simplicity

and clarity, this Motion is being filed in each individual case. In support of this Motion, Defendants state as follows:

1. This lawsuit is one of seven patent-infringement cases involving some of the same patents that are currently pending in this District. These actions are: *Univ. of Tenn. Research Found., et al. v. Int’l Bus. Machs. Corp.*, No. 3:17-193-HSM-CCS; *Univ. of Tenn. Research Found., et al. v. Teradata Operations, Inc.*, No. 3:17-194-HSM-CCS; *Univ. of Tenn. Research Found., et al. v. Amazon.com, Inc., et al.*, No. 3:17-181-HSM-CCS; *Univ. of Tenn. Research Found., et al. v. Microsoft Corp.*, No. 3:17-184-HSM-CCS; *Univ. of Tenn. Research Found., et al. v. Hewlett Packard Enter. Co., et al.*, No. 3:17-185-HSM-CCS; *Univ. of Tenn. Research Found., et al. v. Oracle Am., Inc.*, No. 3:17-186-HSM-CCS; and *Univ. of Tenn. Research Found., et al. v. SAP Am., Inc., et al.*, No. 3:17-187-HSM-CCS (collectively, the “UTRF Cases”).

2. Two additional cases involving some of the same patents are currently pending in the Middle District of Tennessee: *Univ. of Tenn. Research Fund., et al. v. Citrix Sys., Inc.*, No. 3:17-cv-894; *Univ. of Tenn. Research Found., et al. v. Cloudera, Inc.*, No. 3:17-cv-895.

3. Defendants in each of the UTRF Cases have either filed, or contemporaneously will be filing, this same Motion.

4. Across all seven cases, Plaintiffs have asserted that some or all of the same five patents are allegedly infringed by one or more of the Defendants’ products: U.S. Patent No. 6,741,983; No. 7,272,612; No. 7,454,411; No. 7,882,106; and No. 8,099,733 (collectively, the

“Patents-in-Suit”). In four of the UTRF Cases, all five Patents-in-Suit are asserted.¹ In two of the UTRF Cases, a subset of four of the Patents-in-Suit is asserted, with U.S. Patent No. 7,454,411 omitted.² In the remaining UTRF Case, another subset of four of the Patents-in-Suit is asserted, with U.S. Patent No. 6,741,983 omitted.³

5. The Patents-in-Suit include 131 claims, although Plaintiffs have not yet identified which (other than those listed in the Complaints) it plans to assert.

6. The Patents-in-Suit are asserted against a total of 33 products and services from Defendants:

- **Amazon** - Based on Amazon’s understanding of Plaintiffs’ Complaint, there are eight accused services offered by Amazon Web Services: (1) Amazon Redshift; (2) Amazon CloudWatch; (3) Auto Scaling; (4) Elastic Load Balancing; (5) Amazon Machine Learning; (6) Amazon Relational Database Services (RDS); (7) Amazon RDS for Oracle; and (8) Amazon Elastic Cloud Compute (EC2).
- **IBM** - IBM has two accused products: (1) DB2 for Linux, UNIX, and Windows (including pureScale capability); and (2) PureData System for Analytics N3001
- **HPE** - HPE has seven accused products: (1) Helion CloudSystem 9.0; (2) Helion CloudSystem 10.0 (collectively “Helion CloudSystem”); (3) Helion OpenStack 3.0; (4) Helion OpenStack 4.0 (collectively “Helion OpenStack”); (5) Vertica 8.1.x; (6) Vertica 8.0.x; and (7) Vertica 7.2.x (collectively “Vertica”).
- **Microsoft** - Microsoft has ten accused products or services: (1) SQL Server 2012; (2) SQL Server 2014; (3) SQL Server 2016 (collectively “SQL Server”); (4) Windows Server 2012; (5) Windows Server 2012 R2; (6) Windows Server 2016 (collectively “Windows Server”); (7) Azure SQL Database; (8) High

¹ *Univ. of Tenn. Research Found., et al. v. Amazon.com, Inc., et al.*, No. 3:17-181-HSM-CCS; *Univ. of Tenn. Research Found., et al. v. Oracle Am., Inc.*, No. 3:17-186-HSM-CCS; *Univ. of Tenn. Research Found., et al. v. SAP Am., Inc., et al.*, No. 3:17-193-HSM-CCS; *Univ. of Tenn. Research Found., et al. v. Teradata Operations, Inc.*, No. 3:17-194-HSM-CCS.

² *Univ. of Tenn. Research Found., et al. v. Hewlett Packard Enter. Co., et al.*, No. 3:17-185-HSM-CCS; *Univ. of Tenn. Research Found., et al. v. Microsoft Corp.*, No. 3:17-184-HSM-CCS.

³ *Univ. of Tenn. Research Found., et al. v. Int’l Bus. Machs. Corp.*, No. 3:17-193-HSM-CCS.

Performance Computing (HPC) Pack 2012; (9) HPC Pack 2012 R2; and (10) HPC Pack 2016 (collectively “Microsoft HPC Pack”).

- **Oracle** - Oracle has two groups of accused products: (1) some models of certain Exadata products; and (2) certain versions of Oracle Database 11g and Oracle Database 12c.
- **SAP** - SAP has two accused products: (1) SAP HANA 1.0 SPS05-SPS12 and SAP HANA 2.0 SPS00 (hereinafter “SAP HANA 1.0 and 2.0”); and (2) Sybase Adaptive Server Enterprise, versions including 15.7, 15.5, 15.0.1, and 15.0.3 Cluster Edition (hereinafter, “Sybase ASE”)
- **Teradata** - Teradata has two accused products: (1) Teradata Database Versions 13.0 and later (including Teradata Database 13.00, 13.10, 14.00, 14.10, 15.00, 15.10, 16.00) (“Teradata Database”); and (2) Teradata Aster Analytics Portfolio (variously including: Aster Analytics 6.21, 6.20, 6.10, 6.00, 5.11, 5.10, 5.0-R2, 5.0-RI) (“Teradata Aster”).

The table below shows which patents are asserted against which products.

	'733	'411	'106	'983	'612
Amazon	Amazon Redshift; Amazon CloudWatch; Auto Scaling; Elastic Load Balancing	Amazon Redshift; Amazon CloudWatch; Auto Scaling; Elastic Load Balancing	Amazon Machine Learning; Amazon RDS; Amazon RDS for Oracle; Amazon EC2	Amazon RDS; Amazon RDS for Oracle; Amazon EC2	Amazon Machine Learning; Amazon RDS; Amazon RDS for Oracle; Amazon EC2
IBM	DB2 for Linux, UNIX, & Windows (incl. pureScale capability)	DB2 for Linux, UNIX, & Windows (incl. pureScale capability)	PureData System for Analytics N3001	N/A	PureData System for Analytics N3001
HPE	Helion CloudSystem; Helion OpenStack	Not asserted	Vertica	Vertica	Vertica

Microsoft	SQL Server; Windows Server; Azure SQL Database; Microsoft HPC Pack	Not asserted	Azure SQL Database	SQL Server	SQL Server
Oracle	Some models of certain Exadata products; certain versions of Oracle Database 11g and Oracle Database 12c	Some models of certain Exadata products; certain versions of Oracle Database 11g and Oracle Database 12c	Certain versions of Oracle Database 11g and Oracle Database 12c	Certain versions of Oracle Database 11g and Oracle Database 12c	Certain versions of Oracle Database 11g and Oracle Database 12c
SAP	Sybase ASE	SAP HANA 1.0 and 2.0	SAP HANA 1.0 and 2.0	SAP HANA 1.0 and 2.0	SAP HANA 1.0 and 2.0
Teradata	Teradata Database	Teradata Database	Teradata Aster 6.2 and later	Teradata Aster 5.0 and later	Teradata Aster 6.2 and later

7. Defendants are all, to varying degrees, competitors in multiple marketplaces. However, Defendants share a common interest in these UTRF Cases to defend themselves against Plaintiffs' allegations of patent infringement. Thus, for some overlapping issues, such as claim construction and the invalidity of the patents-in-suit, Defendants must coordinate and share information. But for other issues, such as non-infringement (involving highly-confidential technical information) and damages (involving highly-confidential financial information), some or all of the Defendants will have to guard against information sharing.

8. In all but one of the seven UTRF Cases, the Defendants have moved to dismiss the action for lack of venue under Fed. R. Civ. Pr. 12(b)(3), asserting, among other things, that

they do not have a “regular and established place of business” in the Eastern District of Tennessee.⁴ Plaintiffs have submitted to Defendants written discovery specific to the venue issue, and counsel for the parties continue to meet and confer regarding the scope of such discovery. Additionally, in all but one of the UTRF Cases, Defendants have moved to dismiss the claims under Fed. R. Civ. P. 12(b)(6).

9. Pursuant to the Court’s Orders of August 23, 2017, issued in the UTRF Cases, each Defendant has also conducted a separate Rule 26(f) conference with the Plaintiffs’ counsel. The consensus from these conferences is that Plaintiffs and Defendants have divergent views concerning the timing and scope of discovery. For example, Defendants believe the Court should resolve the venue motions and related discovery issues and Rule 12(b)(6) motions prior to the commencement of merits-based discovery. Conversely, Plaintiffs believe that merits discovery should proceed prior to resolution of the Rule 12(b)(3) and 12(b)(6) motions. In addition, Defendants have various other disagreements with Plaintiffs including scheduling of key dates.

10. The parties are in general agreement that given the similar issues in these cases, and to the extent the actions are not dismissed under Rules 12(b)(3) or 12(b)(6), some level of coordination among the actions is appropriate to ensure the most efficient use of the Court’s and the parties’ resources. However, Defendants believe that until the Court determines which Defendants will remain in the Eastern District of Tennessee there are too many unknowns to set a schedule in the UTRF Cases or for the Defendants to attempt to coordinate on claim construction or discovery.

⁴ The Defendants in *Univ. of Tenn. Research Found., et al. v. Microsoft Corp.*, No. 3:17-184-HSM-CCS, have not moved to dismiss for lack of venue under Rule 12(b)(3).

11. Defendants respectfully submit that this is a complex case – the joint coordination of the seven cases involving a total of five patents, 131 claims and assertions of infringement against at least 33 accused products. And it is uncertain which Defendants will remain in the case once decisions are made on the pending venue motion. Thus, Defendants submit that a consolidated case-management conference would be useful to the Court and parties. Defendants also propose that to the extent the court permits the conference, Plaintiffs and Defendants would each submit a consolidated brief to the Court in advance of the hearing setting forth their respective positions on the case-management matters raised in their Rule 26(f) reports.

12. Plaintiffs have stated that they oppose a Case Management Conference in part because “Plaintiffs are concerned that Defendants’ request for an in-person scheduling conference is an attempt by Defendants to argue the merits of their venue defenses before the Court is afforded the opportunity to review the complete briefing on Defendants’ motions to dismiss.” Ex. A (email from Daniel Hipskind to Crews Townsend of September 13, 2017). Plaintiffs’ stated concern is misplaced. Defendants are not attempting to argue the merits of the venue defenses before briefing is complete, and hereby commit that they will not affirmatively raise the merits of any of the Defendants’ venue motions at the requested in-person scheduling conference.

Accordingly, Defendants respectfully request that this Court set a consolidated scheduling conference applicable to the UTRF Cases.

Dated: September 13, 2017

Respectfully submitted,

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s/ C. Crews Townsend

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